

COPY

May 20, 1954

Richard C. Duncan
Assistant Attorney General

Attorney General

Interpretation of c. 128, R. L.

James J. Barry, Commissioner
Welfare Department

Dear Mr. Barry:

You have inquired by your letter of May 18, 1954, whether the Department of Public Welfare on behalf of the State may institute bastardy proceedings under R. L. c. 128 against a putative father where the mother is a recipient of aid to dependent children. I advise that there is no statutory authority for this action.

Bastardy actions, while criminal in form, are civil in nature, and R.L. c. 128 gives to the mother of an illegitimate child the primary right of action against the putative father. Being civil in nature it follows that this right of action would be personal to the mother unless a statutory exception and provision is made. By ss. 6 and 9 a town or county is given the right to prosecute the action where the mother refuses or neglects to do so so that the political sub-division may be saved harmless from the maintenance of the child. Nowhere is the State authorized to bring the action in these circumstances and would have no standing in Court as, by analogy of s. 7, the action would have to be brought in the name of the State. This office could not institute proceedings in the name of the mother as we may not represent, in our official capacity, private litigants.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD:HP

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